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THE PROENGLISH Advocate

ProEnglish Files Suit to Overturn Executive Order 13166

Suit Asserts 1st Amendment Right to Speak in English

On March 12, 2002, ProEnglish filed suit in U.S. District Court in the Eastern District of Virginia asking the court to declare Executive Order 13166 (E.O. 13166) unconstitutional and a violation of Americans' 1st Amendment right to speak English.

Executive Order 13166 is the administrative order that was signed by President Clinton in the waning days of his administration that forces every recipient of federal funds to provide interpreters and translations for people who don't speak English, or face prosecution for civil rights violations. The order would apply to almost every federal state and local government agency in the country as well as non-governmental institutions and contractors receiving federal assistance and medical service providers receiving Medicaid and Medicare reimbursement.

In announcing the filing of its lawsuit, ProEnglish Chairman Bob Park said, "We are taking this action to defend the right of physicians, state and local government agencies, and numerous other recipients of federal funds, to speak English if they choose to do so, without the threat of prosecution for violating someone's civil rights."

ProEnglish Exec. Dir. McAlpin announcing lawsuit at Natl. Press Club

Park commented that ProEnglish's board had only reluctantly decided to go to court after all attempts to persuade the Bush Administration to revoke the order, or to get Congress to overturn it, had failed to produce results. He said, "We believe that President Bush's political advisors made a serious mistake by persuading him not to revoke this utterly divisive and destructive policy bequeathed to him by the previous administration." Park added, "If necessary, we are prepared to fight this case all the way to the U.S. Supreme Court.

The ProEnglish complaint cites four main grounds for overturning E.O. 13166:

- The order violates the 1st Amendment by forcing people to speak in other languages
- The executive branch lacks the authority to promulgate or enforce such a policy without the explicit approval of Congress
- The order violates Administrative Procedures Act requirements for public notice and comment
- The order violates the regulatory fairness laws of the Small Business Fairness Act and the Paperwork Reduction Act

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What Works

"I have worked with children that have come into kindergarten with no English and they go out my door reading beautifully. I think (bilingual education) is wrong."

– veteran elementary school teacher Kim Huddleston commenting on English immersion teaching methods as quoted in the *Orange County (California) Register*, Jan. 16, 2001

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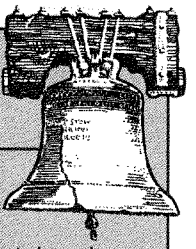
Around the Nation



Iowa Becomes 27th State to Adopt English

Iowa's Democratic Governor Tom Vilsack withstood pressure from Latino activist groups and the *Des Moines Register* and signed the English Language Reaffirmation Act declaring English Iowa's official language. Iowa thus becomes the 27th state to declare English the official language.

To appease the bill's opponents, Vilsack declared that he would seek additional funds up to $1 million to provide English as a second language instruction to anyone who wanted to learn. Republican State Senator Steve King, chief sponsor of the legislation, said the law encourages new immigrants to assimilate.

The debate about the official English law in Iowa has been heated. Hispanic advocacy groups, who have a growing influence in state politics, denounced the bill as anti-immigrant.

And the *Des Moines Register,* which has editorialized in favor of mass immigration, called the law an "embarrassment" and an "exercise in arrogance."

Nevertheless, polls consistently showed that Iowans overwhelmingly favored English as the official language. Vilsack, who earlier had backed away from a plan he announced to increase immigration to Iowa – and thus increase its non-English speaking population — plans to run for reelection next year.

Puerto Rico Statehood Party Mired in Corruption Scandal

Officially Spanish-speaking Puerto Rico, promoted aggressively in recent years as a candidate for admission as the 51st State, is in the headlines because of rampant large-scale corruption. Much of the corruption is linked to statehood efforts.

Since 2000, according to FBI files, there have been 107 indictments that led to the arrests of cabinet members, police officers, mayors and legislators. The charges range from drug trafficking and money laundering to influence peddling and extortion.

To date, 16 convictions have been handed down.

Of particular note is that Victor Fajardo, Puerto Rico's education secretary from 1994 to 2000 siphoned off federal money not only for himself and his associates, but also to fund the operations of the New Progressive Party (N.P.P.), the main political party backing statehood.

Fajardo is accused of extorting millions of dollars in cash, a house worth $1 million and a priceless painting. So flush with cash was Fajardo that police found $300,000 hidden in his home.

Although its pervasive entanglement with corruption would seem likely to hurt the pro-statehood N.P.P., Luis Davila Colon, a local journalist, said that the statehood movement would survive the scandal.

Main Street Puerto Ricans, however, expressed their disgust and demanded a cleanup.

Texas Gubernatorial Primary Features 'Spanish-Only' Political Debate

Two contenders for the Texas Democratic gubernatorial nomination, held a debate in Spanish on March 1, just days before the state primary election. According to the National Association of Latino Elected and Appointed Officials, it was the first time candidates for governor of any state had debated publicly in Spanish.

The debate was the brainchild of wealthy Laredo banker, Tony Sanchez, who challenged Texas Attorney General Dan Morales in the race for the Democratic nomination for governor. The debate became heated over the issue of language when Morales insisted on translating his answers partly in English and defended his actions saying, "The fact of the matter is that the vast majority of the citizens of our state speak English. That also applies to a significant number of Hispanic Texans." He added, "I'm proud of my heritage. But I'm prouder that I'm a Texan and that I'm an American."

In response Sanchez accused Morales of "a slap in the face to 7 million Latinos" who prefer speaking Spanish and countered, "He (Morales) has never shown the pride that we have to be Hispanic." Sanchez, who largely financed his own campaign, blanketed the state with TV commercials and outspent Morales 10-1. The lopsided funding advantage helped the Laredo banker win the March 12 primary with 60 percent of the vote. He will face Republican Governor Rick Perry in the November election.

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Continued from page 1

The suit asks the court for an injunction to bar all enforcement of E.O. 13166, and to declare it void and unconstitutional.

At a conference announcing the suit ProEnglish's outside counsel Barnaby Zall pointed out that E.O. 13166 was based on a deeply flawed interpretation of the 1964 civil rights law that attempts to equate a person's language with their "national origin" for determining illegal discrimination. That interpretation flies in the face of 20 years of previous court decisions asserting that there was no such equation. Zall said, "This case asks whether speaking English is illegal . . . In other words, if you speak English to someone who doesn't, have you violated their civil rights?"

The lawsuit names ProEnglish, its executive director, K.C. McAlpin, and four physicians involved in active practice as plaintiffs. It names President George W. Bush, Attorney General John Ashcroft, and Health & Human Services Secretary Tommy Thompson, in their official capacities, as defendants.

The government has 60 days to file its response to ProEnglish's lawsuit with the court. Copies of ProEnglish's official complaint, as well as a backgrounder on the case are available on ProEnglish's website: www.proenglish.org. Copies can also be obtained free by writing to ProEnglish Publications, 1601 N. Kent St. #1100, Arlington, VA 22209.

OMB Report Hides Huge Cost of Multilingualism

The Office of Management and Budget (OMB) released its analysis of the costs and benefits of implementing Executive Order 13166 (E.O. 13166) [for def. see story on page 1].

OMB's report, released on March 13, says that the costs are impossible to estimate, since there is no way to know how much money the government was spending to make translation services available before E.O. 13166 went into effect. Instead, the OMB relies on a handful of deeply flawed case studies to hazard a guess that the order would cost the government less than $2 billion annually.

To cite one example, the OMB report estimates that the requirements of E.O. 13166 will cost health care providers on average only $0.04 per encounter with their non-English speaking population. Yet Washington State, where state law requires language assistance, reports that the cost of providing interpreter for its non-English speaking population averages out to $38.46 per encounter. This figure, while low compared to many other estimates, is more than 900 times larger than the OMB estimate.

ProEnglish Executive Director K.C. McAlpin criticized the OMB effort saying, "OMB has stiff-armed Congress by refusing to make a serious effort to estimate the cost of implementing this executive order. Instead, they relied on wholesale omissions and slanted assumptions taken straight from the rhetoric of E.O. 13166 advocacy groups to hide the staggering cost of E.O. 13166 from the American people."

Initially OMB had refused to do an analysis at all, claiming that the order was not a new regulation but simply a clarification of existing regulations and laws. But Rep. Ernest Istook (R-OK), a strong critic of E.O. 13166, succeeded in attaching an amendment to an appropriations bill that required OMB to prepare a report on the order's costs and benefits.

The ProEnglish Advocate

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Use Common Language to Unite all Americans

Guest Column by Dan Pak, *The Atlanta Journal Constitution*, February 4, 2002

The power of language is magical.

From a distance, you can't hear what two men are talking about. Then, you see one man start digging a ditch and the other begin cutting trees. They communicated through a common language.

The power of language is also mysterious. Three men are gathered and two speak the same language. They immediately begin chattering away, leaving the third man isolated and lonely. He looks for someone who understands his language. When he finds one, he is separated from the others and joins with his new friend. The common language is a bonding agent among the people. It also separates people.

People sharing the same ethnic background tend to congregate. At first, they are attracted to each other by being similar in appearance. But if someone does not speak the same language, he does not belong to the group despite physical similarity. Language transcends ethnicity. People relate more by common language than by common physical makeup.

Before my family came to this country, we knew English was the common language of the United States. Before we learned anything about the country, we knew we had to learn English if we wanted to be comfortable living in the United States. Learning the country's language seemed to be a bare minimum requirement for any prospective immigrant.

In the Atlanta area, there are many immigrant communities. Stepping into one of them and mingling with the crowd while listening to the sound of the hustle-and-bustle, one loses sense of orientation, as if transported straight back to the other side of Pacific Ocean by some magical power.

You hear animated conversation in various Asian languages. You feel as if an invisible wall cordoned off the concessionaires from the American landscape. The life of old Asia fills the air. The voice of an elderly lady catches me by surprise. Looking back, I see in her my mother — long deceased.

Stepping back into the street, I am joined with my middle-aged children waiting for me with their American spouses. In one fleeting moment, I crossed the cultural divide. The crevice between these two worlds may be widening as new waves of immigrants are introduced to the area. The San Andreas Fault does not exist only in geography. When the English-speaking majority is moving in one direction, the foreign language group is moving toward the other way. The friction is bound to bring about a social earthquake.

The often-heard phrase "enrich America by diversity" is plausible only if backed up by the line, "shared through common language."

It's time the magical power of common language is put to work to unite all people of different backgrounds. Its mysterious, trans-cendental bonding power would help bring unity to the country.

Let's speak English, American English — preferably with a Southern accent to add a regional flavor.

Dan Pak, a naturalized U.S. citizen of Korean origin, is a retired businessman living in Bremen, Georgia.

Translation Adds Insult to Injury

Carmen Aponte, site manager for M.D. Fox manor, a housing complex for the elderly in Hartford, Connecticut, had a more pointed message for the Spanish speaking Puerto Rican residents when she translated a warning in the building's monthly newsletter to tenants. The notice in English was blunt but inoffensive: "We are getting too many burned garbage disposals due to the negligence and carelessness from the tenants. Please stop throwing rice in the garbage disposals. As of this month, if your garbage disposal breaks due to the above, you will be charged for it."

But the language Ms. Aponte choose to add to the Spanish translation was offensive by any standard: "You have to get used to the fact that you do not live in Puerto Rico, where leftovers were given to the pigs. We do not have pigsties, but we do have garbage cans. Don't be such jibaros [translation 'hicks']. Here in the U.S., get used to throwing the rice in the garbage can, not in the disposal. If this is too hard for you to do, move and continue with the customs of Puerto Rico."

When residents protested, Ms. Aponte who is Puerto Rican herself quickly apologized. But some of her tenants were not appeased. They said that they had never encountered racial bias in Hartford, even years ago when they might have expected it. And they were hurt that another Puerto Rican would make such comments. Said tenant Flor Munoz, "You'd think that someone who is Puerto Rican like yourself would know better. But that she thinks this way, you're not sure how to deal with it. You can't forgive it."

A spokesman for Aponte's employer said they were satisfied that Ms. Aponte was not a racist, but refused to disclose if she had been disciplined over the incident. (*The Hartford Courant*, Mar. 4, 2002)

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In the Courts

Oklahoma Supreme Court Blocks Official English Petition

The fundamental right of U.S. citizens to petition their government, protected by the First Amendment to the U.S. Constitution apparently means nothing to the nine non-elected justices of the Oklahoma Supreme Court. In a decision announced April 2, the court ruled that a citizens' initiative declaring English the state's official language could not be submitted to the voters this fall, claiming that the draft law was unconstitutional.

ProEnglish Executive Director K.C. McAlpin commented, "The court knew the voters would overwhelmingly approve the making English the official language of Oklahoma, so they had to invent reasons to block it." He added, "This act of political censorship shows the fear and loathing judicial and political elites have for the voice of the people concerning English."

ProEnglish was not involved in the legal defense of the initiative.

NY Hospitals Sued for 'Inadequate' Language Services

Invoking Executive Order 13166's definition of language services as a 'civil right,' a New York City advocacy group filed complaints against two Brooklyn hospitals in February accusing them of failing to offer non English-speaking residents adequate translation and interpreter services as required by federal law.

The complaint filed with the New York Attorney General's office alleges that Wykoff Heights Hospital and Woodhull Hospital violated the civil rights of community residents by denying them equal access to the institutions' healthcare services. The complaint was filed despite the fact that one of the hospitals (Woodhull) disclosed that it has a volunteer translation pool of 625 multi-lingual staff members capable of translating 50 different languages, and subscribes to an instantaneous telephone translation service on call 24 hours a day.

Andrew Freeman, a co-director of the group filing the complaint, nevertheless claimed negligence on the part of the hospitals. The complaint is clear that the issue is not just failure to provide interpreters, but a failure to provide adequate "skilled oral interpreters," i.e., failing to provide interpreters who are trained in the use of medical terminology.

Freeman added that the problem is not limited to New York City.

He might have been thinking about Boston where the *Boston Globe* reported March 14 that doctors and hospitals there were struggling to cope with an influx of non-English speaking patients from Africa. According to the report many of these patients speak "low incidence" African languages and tribal dialects such as Tigrinya, Dan, and Ta Bedawie for which there are few or no interpreters.

In such cases the use of international language line translation services are often useless since they can handle only about 150 languages, out of some 6,700 languages spoken worldwide.

Citizens Group to Appeal Alaska Court Ruling Overturning Official English

An Alaskan state judge has ruled that the state's official English law is invalid because it violates free speech protections in the Alaska constitution. The March 26 ruling by Judge Fred Torrisi came on a lawsuit by the ACLU on behalf of a group of local political officials filed shortly after Alaska's official English law was adopted by a 70 percent margin in a 1998 voter referendum.

Alaskans for a Common Language, the statewide citizens' committee that had sponsored the official English initiative, immediately announced that it would appeal the decision. A spokesman for the group downplayed the significance of the judge's ruling saying that it had anticipated an unfavorable ruling because of the influence of local politics.

The only other state official English law to finally be overturned on appeal was Arizona's, which was struck down by the Arizona Supreme Court in 1998. But most such efforts have failed. Last year ProEnglish attorneys played a key role in rebuffing a similar challenge by the ACLU to Utah's official English law.

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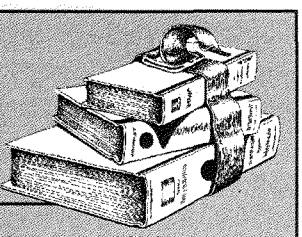
Dispatches from the Bilingual Ed Battlefront



Gov. Davis Attempts to Scuttle Bilingual Ban in CA

Proposition 227, which sharply reduced the scope of bilingual education instruction in California, is under attack. The State Board of Education is considering regulations to give control over the classroom placement of non-English speaking students back to the bilingual education industry.

Giving parents, and not school administrators or teachers the biggest say in whether or not to enroll a non-English speaking student in a bilingual education class was one of the biggest reforms of Prop. 227. Since the proposition passed overwhelmingly in a 1998 referendum, the test scores of hundreds of thousands of English Language Learning (ELL) students who were placed in English immersion style classrooms have risen dramatically.

But the bilingual education industry has never stopped trying to roll back the clock to the days when most ELL students were funneled directly into bilingual education classrooms with almost no parental choice involved. As bilingual education advocate Mary Hernandez said in commenting on the proposed State Board of Education regulations, "The board's intention is to let the school choose, rather than the parent."

Supporters of Prop. 227 were outraged. They point to the phenomenal increase in ELL student test scores since the initiative largely dismantled California's once vast bilingual education program. As reported in *The ProEnglish Advocate* last October, since Prop. 227 was implemented the test scores of ELL students across all elementary grade levels have improved 46 percent in reading and 57 percent in math.

Proposition 227's author, businessman entrepreneur Ron Unz pointed out that, although it is theoretically independent of the Governor, the board is dominated entirely by Davis appointees. He and other critics of the proposed changes charge that the Governor is looking for a way to repay the bilingual education industry for its political support, without having to take responsibility for his unpopular actions.

NYC Mayor Blasts Bilingual Ed

The man who succeeded Rudy Giuliani as Mayor of NYC, Michael Bloomberg, strongly denounced bilingual education during a February speech, and blamed its failure squarely on the shoulders of an educational bureaucracy more interested in its own welfare than teaching New York children.

Appearing before a local community council, Mayor Bloomberg blasted the board of education's bilingual education program. "The thing we've got to focus on is understanding that children need to learn to read and speak good English," the Mayor said, adding, "This is an English-speaking country, like it or not."

"Parents want their children to learn to speak English. Unfortunately, there is a bureaucracy that does not want that to happen," he said. New York's bilingual education program, which has come under increasing criticism for its abysmal performance, handles an estimated 160,000 children out of a total enrollment of 1.1 million.

Bilingual Ed Industry Gears Up to Fight MA Initiative

Representatives and allies of Massachusetts well-heeled bilingual education industry geared up to protect their virtual monopoly over funding for the instruction of the Limited English Proficient (LEP) children in the state's public school system. They have formed a committee named "Leave No Child Behind" to oppose the statewide citizens' initiative being sponsored by English for the Children – Massachusetts.

The initiative which the English for the Children committee expects to qualify for the November ballot, would require non-English speaking children to undergo a year of English immersion style instruction before being placed in mainstream classes. Like successful previous citizens' initiatives in California and Arizona, the Massachusetts effort has the financial backing of businessman-entrepreneur Ron Unz.

Spokesmen for the Massachusetts bilingual education industry claimed that curtailing bilingual education in California was not responsible for the dramatic rise in test scores registered by California's LEP students since the bilingual program ended there. Their Leave No Child Behind coalition was cheered at a Boston rally staged by the Massachusetts Federation of Teachers and the Boston Teachers Union. The pro-industry group pledged to stage more rallies to fight the initiative as the election draws closer.

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E.O. 13166 Regulations Seek to Overturn State Official English Laws

As reported elsewhere in this issue of *The ProEnglish Advocate*, Iowa recently became the 27th state to make English its official language. Many of these state laws have been enacted by citizens' initiatives that passed by landslide margins ranging from 2-1 to 9-1 in state elections going back to 1986.

All these laws make common sense exceptions for the state government to translate documents and provide interpreters for law enforcement, public health and safety, tourism promotion and numerous similar reasons. But that is not enough for multi-cultural ideologues in the federal government who want to get rid of state official English laws and have little use for democracy when it gets in their way.

Their goal is clear from reading many of the published "policy guidance" documents issued by the various government departments and agencies to implement E.O. 13166 (see story on page 1). One giveaway is the terminology these guidelines use to describe state official English laws. For example guidance issued by the Department of Justice, Department of Transportation, and Department of the Treasury all make reference to state and local "English-Only" laws, a term of art taken straight from the rhetoric and propaganda of multi-lingual advocacy groups.

In reality the various official English laws are anything but "English-Only." And official English organizations like ProEnglish have never argued for rules or laws that would keep government agencies from using other languages or providing translations and interpreters when there were good reasons for doing so. But that is a far cry from making taxpayer financed translation and interpreter services a "civil right," which is exactly what E.O. 13166 intends to do.

The published regulations all make clear that E.O. 13166 overrides any state or local laws making English the official language wherever such laws conflict. Which is one more reason why E.O. 13166 must be overturned.

Increase in Non-English Speaking Students Far Outstrips School Funding in Colorado

Colorado school districts are fighting a losing battle in their efforts to keep pace financially with a deluge of non-English speaking students flooding into the state's public schools. The number of so-called Limited English Proficient (LEP) students has tripled in the last decade prompting school administrators to dip deeply into operating budgets, appeal for tax increases, and make urgent requests for federal grants, to provide supplemental language instruction for the state's 71,000 LEP students that collectively speak140 different languages.

"There is a colossal ripple effect throughout the districts, because you are inevitably forced to borrow from Peter to serve Paul" said Gully Stanford, a member of the State's Board of Education.

Whereas the supplemental LEP funding provided by the state was once considered adequate, skyrocketing numbers of LEP students have far outstripped available state aid. For example the additional cost of educating one LEP student is about $1,500 in the Boulder, Colorado school system. But the state provides only $90 per LEP student in supplemental funding.

Civil rights attorneys are reported to be considering filing suit to ask a federal court to force Colorado to increase its LEP funding, similar to an earlier court ruling in Arizona.

Bilingual Ed Industry Incentives

"What is the incentive for districts to teach the [non-English speaking students] English so well that they become reclassified and move entirely to the mainstream? The districts would not only lose money but federal program directors and bilingual teachers would be out of work."

– from a letter to the editor of *The Arizona Republic* by Johanna Haver Dec. 26, 2001

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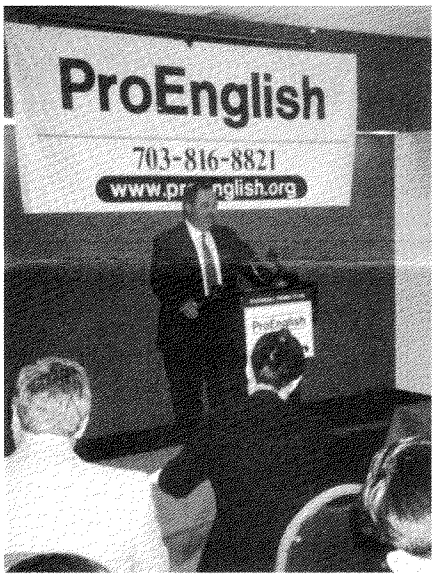
White House Grilled on ProEnglish Lawsuit

This is an excerpt from the official transcript of the White House Press Briefing March 26, 2002, with White House Press Secretary Ari Fleischer.



(Reporter): "Ari, a non-profit group [i.e., ProEnglish] that wants to preserve English as the only official U.S. language has filed suit against the administration."

(Mr. Fleischer): "I'm sorry, say it again. I couldn't hear you."

(Reporter): A non-profit group [ProEnglish] that would like to preserve English as the only official U.S. language has filed suit against the administration over the President's executive order regarding the English language. Do you have anything on that, or how the administration might respond to it?"

(Mr. Fleischer): First I've heard about it, so let me take a look.

(Ed. Note: the reporter is mistaken, of course. The U.S. has no official language. ProEnglish was quick to contact the White House press office to provide them with background information about our lawsuit.)

At left: ProEnglish Attorney, Barnaby Zall, talks to reporters about ProEnglish lawsuit at National Press Club.

What You Can Do

To express your views on official English to President Bush, call (202) 456-1414. To call your U.S. Senators or U.S. Representative, call the Capitol switchboard at (202) 224-3121 and ask to be connected to their office. For information about bills in Congress and suggested action items, access ProEnglish's website at www.ProEnglish.org.

❑ Keep up the good work. Here is my donation:
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